

**Paula A. Barran**, OSB No. 803974  
pbarran@barran.com  
**Shayda Zaerpoor Le**, OSB No. 121547  
sle@barran.com  
**Donovan L. Bonner**, OSB No. 181929  
dbonner@barran.com  
Barran Liebman LLP  
601 SW Second Avenue  
Suite 2300  
Portland, Oregon 97204-3159  
Telephone: (503) 228-0500  
Facsimile No.: (503) 274-1212  
Attorneys for Defendants  
University of Oregon and Hal Sadofsky

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

JENNIFER JOY FREYD,

Case No.: 6:17-cv-448-MC

Plaintiff,

v.

UNIVERSITY OF OREGON, MICHAEL H.  
SCHILL and HAL SADOFSKY,

**DEFENDANTS UNIVERSITY OF  
OREGON AND HAL SADOFSKY'S  
RESPONSE TO PLAINTIFF'S  
NOTICE OF SUPPLEMENTAL  
AUTHORITY**

Defendants.

---

Defendants University of Oregon and Hal Sadofsky file this Response to Plaintiff's Notice of Supplemental Authority. Plaintiff argues that this court should assume how the Ninth Circuit will rule in *Rizo v. Yovino*, which was recently vacated by the U.S. Supreme Court. *Rizo v. Yovino*, 887 F.3d 453 (9th Cir. 2018); *Yovino v. Rizo*, 586 U.S. \_\_\_, No.18-227 (Feb. 25, 2019).

As an initial matter, *Rizo v. Yovino* is still not relevant to this case. The dispute there was about whether an employer could use a job candidate's old salary to set a salary if hired. That is

not at issue in this case and in any event, at the time plaintiff was hired, 1987,<sup>1</sup> the law was to the contrary. *Kouba v. Allstate Ins. Co.*, 691 F.2d 873, 878 (9th Cir. 1982).

Further, when the Court vacated *Rizo v. Yovino*, the result was to “to nullify or cancel; to make void.” *Massachi v. Astrue*, 486 F.3d 1149, 1154 n. 21 (9th Cir 2007). There is no precedential effect. *United States v. Gonzales*, 749 F.2d 1329, 1337 (9th Cir. 1984); *Kindred v. W. Transp. Co.*, Civil Action No. 77-606., 1980 U.S. Dist. LEXIS 14196, at \*6 n. 2 (D. Or. Aug. 19, 1980), and the vacated opinion lacks persuasive authority. *Massachi*, 486 F.3d at 1154 (a vacated decision no longer exists); *Kuahulu v. Emp’rs Ins. of Wausau*, 557 F.2d 1334, 1337 (9th Cir. 1977) (vacating erases any precedential effect).

Plaintiff’s Notice of Supplemental Authority summarizes the vacated opinion and argues that it was correctly decided and unlikely to change on reconsideration. That is a theory; it is not the presentation of a supplemental authority. It also ignores the law cited above and the fact that “a judge may change his or her position up to the very moment when a decision is released.” *Yovino v. Rizo*, 203 L.Ed.2d 38, 40 (2019).

DATED this 18th day of March, 2019.

BARRAN LIEBMAN LLP

*s/Paula A. Barran*

By

Paula A. Barran, OSB No. 803974  
pbarran@barran.com  
Shayda Zaerpoor Le, OSB No. 121547  
sle@barran.com  
Donovan L. Bonner, OSB No. 181929  
dbonner@barran.com

Attorneys for Defendants University of Oregon  
and Hal Sadofsky

---

<sup>1</sup> Freyd Decl. ECF 72, at ¶ 3.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of March, 2019, I served the foregoing **DEFENDANTS UNIVERSITY OF OREGON AND HAL SADOFSKY'S RESPONSE TO PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY** on the following parties at the following addresses:

Jennifer J. Middleton  
Caitlin V. Mitchell  
Johnson Johnson Lucas & Middleton, PC  
975 Oak Street, Suite 1050  
Eugene, OR 97401-3124  
jmiddleton@justicelawyers.com  
cmitchell@justicelawyers.com  
Attorneys for Plaintiff

Whitney Stark  
Albies & Stark, LLC  
210 SW Morrison Street, Suite 400  
Portland, OR 97204-3189  
whitney@albiesstark.com  
Attorneys for Plaintiff

Stephen F. English  
Cody Weston  
Nathan R. Morales  
Perkins Coie LLP  
1120 N.W. Couch Street, 10<sup>th</sup> Floor  
Portland, OR 97209-4128  
senglish@perkinscoie.com  
cweston@perkinscoie.com  
nmorales@perkinscoie.com  
Attorneys for Defendant Michael H. Schill

by the following indicated method or methods set forth below:

- ☒ **Electronic Filing using the Court's ECF System**
- ☐ **First-class mail, postage prepaid**
- ☐ **Hand-delivery**
- ☐ **Overnight courier, delivery prepaid**
- ☐ **E-mail**

*s/Paula A. Barran*

---

Paula A. Barran  
Shayda Zaerpoor Le  
Donovan Bonner